

## THE CHANCELLOR :

This case is submitted to the Court upon exceptions to the report of the Auditor by which the residue of the proceeds of the sale of the real estate in the proceedings mentioned, was assigned to the heirs at law of Annie Mercer, and not as the acceptants insist it should have been, to her personal representatives, and through them to her next of kin, under our statute of distributions.

The land sold was the property of William D. Mercer, deceased, and upon his death intestate descended to Annie Mercer, his infant child and only heir at law. The personal estate of the father being insufficient to pay his debts, a creditor's bill for the sale of the realty was filed, and a decree was passed for that purpose. Under this decree a sale was made on the 16th of November, 1850, and a conditional order of ratification obtained, but before the final ratification, or the time limited to show cause against the ratification had elapsed, Annie Mercer, the infant heir, died, her death having occurred on the 10th of December, 1850, and the sole question raised by the exceptions is, whether the surplus proceeds of sale after paying the debts of the father should be given to the heir at law, or the personal representatives of his daughter and heir.

Upon the death of William D. Mercer, his land of course, descended to his heir at law, subject, however, to the claims of creditors, and the question therefore is, whether at the period of the death of his daughter and heir, the proceedings in this case had progressed to that point, which, according to the doctrine applicable to the subject, had changed the nature of the property and converted that into personal which had been real estate.

Upon this question very elaborate and well-considered written arguments have been prepared and presented by the counsel of the respective parties, which I have read with attention; and I should have much difficulty in coming to a conclusion upon the subject, but that I am strongly impressed with the conviction that the point upon which the controversy